

Decision 03-10-012 October 2, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions  
of Public Utilities Code § 761.3 enacted  
by Chapter 19 of the 2001-02 Second  
Extraordinary Legislative Session.

Rulemaking 02-11-039  
(Filed November 21, 2002)

**OPINION CORRECTING ERROR  
REGARDING RESPONDENTS**

On November 21, 2002, the Commission opened this proceeding and named eight respondents. On September 4, 2003, the Commission named 16 additional respondents. (Decision (D.) 03-09-002.)

We had intended to modify the additional respondent list while the matter was being considered in draft form based on information obtained before the adoption of D.03-09-002. That modification did not occur, however, due to a communication error. We now correct that error by deleting two of the additional respondents, and correct the service list as described below.

**1. Nexant**

We delete Nexant from respondent status. We do this based on our understanding that Nexant neither maintains nor operates any facility for the generation of electric energy owned by an electric corporation or within California. We also understand that Nexant does not own, control, operate or manage any electric generation plant for compensation within California.<sup>1</sup>

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<sup>1</sup> The Commission “shall implement and enforce standards adopted [by the California Electricity Generation Facilities Standards Committee] ... for the maintenance and

We retain Nexant on the appearance list with party (but not respondent) status. Nexant (through the appearance of Barney Speckman) was placed on the official service list for this proceeding by being brought forward from a list created and maintained by the Commission for the work of the California Electricity Generation Facilities Standards Committee (Committee). Notice of this treatment was provided in the February 19, 2003 Scoping Memo in this proceeding, and no objection was filed. As a result, Nexant gained appearance (party) status. We here only reverse the error in further naming Nexant a respondent.

## **2. Millennium Energy**

We also delete Millennium Energy (Millennium) from respondent status. We do this based on our understanding that Millennium is an asset manager of qualifying facilities.<sup>2</sup>

Moreover, we delete Millennium from appearance (party) status. The appearance (through Andrew Skaff) was brought forward from the Committee

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operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation.” (Pub. Util. Code § 761.3(a).) Electrical corporation “includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within” California, with some exceptions. (Pub. Util. Code § 218(a).)

<sup>2</sup> By a letter from counsel representing Millennium dated August 29, 2003, we are informed that Millennium is an asset manager for two facilities, and that each facility is a qualifying facility under the federal law referenced in Pub. Util. Code § 761.3(d)(2)(A). Pub. Util. Code § 761.3(d)(2)(A) states that: “Except as otherwise provided in this subdivision [regarding submission of reports], this section shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive).”

service list without objection. Counsel for Millennium (Diane Fellman) is also in the information only category of the service list. By letter dated August 29, 2003, Fellman asks that Skaff be removed as an appearance for Millennium, and that she remain on the service list for Millennium in the information only category. By motion filed and served on September 18, 2003, Millennium filed the letter and moves for the relief requested therein. The motion is granted.

### **Waiver of Comment Period**

This order corrects an amendment to the original OIR by deleting respondents that we included in D.03-09-002 by error. Just as an initiating OIR, and amendments to the OIR, are not subject to public review and comment, this order correcting the amendment to the initiating OIR is similarly not subject to public review and comment. Accordingly, the 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner. John E. Thorson and Burton W. Mattson are the assigned Administrative Law Judges.

### **Findings of Fact**

1. The Order Instituting Rulemaking names eight respondents, and D.03-09-002 names 16 additional respondents.
2. Two of the 16 additional respondents were added in error.
3. Nexant does not maintain or operate any facility for the generation of electric energy owned by an electric corporation or within California, and does not own, control, operate or manage any electric generation plant for compensation within California.
4. Millennium Energy is an asset manager of qualifying facilities.

### **Conclusions of Law**

1. The Commission must implement and enforce standards adopted by the California Electricity Generation Facilities Standards Committee regarding the operation and maintenance of electric generation facilities owned by an electrical corporation or located in California.
2. An electrical corporation includes every corporation or person owning, controlling, operating, or managing any electrical plant for compensation within California, with limited exceptions.
3. Two additional respondents named in D.03-09-002 should be deleted from respondent status, and the service list corrected as described in this order.
4. The motion of Millennium should be granted.
5. This order should be effective immediately to clarify respondent status in this proceeding without delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The following two appearances and the entities added as respondents to this proceeding in Decision 03-09-002 are deleted from respondent status effective immediately: Nexant and Millennium Energy (Millenium).
2. Barney Speckman remains in the appearance (party) status for Nexant.
3. September 18, 2003 motion of Millenium is granted as provided herein. Andrew Skaff is removed as an appearance for Millennium, with Diane Fellman remaining on the service list for Millennium in the information only category.

4. The Commission's Process Office will, as soon as reasonably possible, make these changes to the service list, and post the updated service list on the Commission's web page.

This order is effective today.

Dated October 2, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

Commissioners

Commissioner Susan B. Kennedy, being necessarily absent, did not participate.